

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER

I.T.A. No. 2367/Mum/2024
Assessment Year: 2018-19

Reliance Power Limited Reliance Centre Ground Floor 19, Walchand Hirachand Marg Ballard Estate Mumbai - 400001 [PAN: AAACR2365L]	Vs	Principal Commissioner of Income Tax-6, Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Niraj Sheth & Shri Gunjan Kakkad, A/R
Revenue by :	Smt. Sanyogita Nagpal, CIT, D/R

सुनवाई की तारीख/**Date of Hearing** : 21/08/2024
घोषणा की तारीख/**Date of Pronouncement** : 23/08/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM :

This appeal by the assessee is preferred against the order of the PCIT, Mumbai -6, dated 08/03/2024 pertaining to AY 2018-19.

2. The sum and substance of the grievance of the assessee is that the PCIT erred in assuming jurisdiction u/s 263 of the Act and further erred in holding that the assessment order dated 19/04/2021 framed u/s 143(3) r.w.s. 144B of the Act, is not only erroneous but prejudicial to the interest of the revenue.

3. Representatives of both the sides were heard at length, case records carefully perused and the relevant documentary evidence brought to our notice duly considered in the light of Rule 18(6) of the ITAT Rules, 1963.

4. Briefly stated the facts of the case are that the assessee electronically filed its return of income on 30/11/2018 declaring total income at Nil and current year loss of Rs.236,38,89,154/-. The return was selected for scrutiny assessment and accordingly statutory notices were issued and served upon the assessee. Subsequently, the AO completed the assessment proceedings by observing as under:-

“6. After due verification and examination of the issues, the income of the assessee for the above assessment year is being assessed as under:-

Income under normal provisions of the Act

Sr. No.	Particulars	Amount (Rs.)
1	Assessed income u/s 143(1)	(-) 1,97,49,90,681
Add:	Disallowance u/s 14A	168,23,98,967
	Carry forward loss	29,25,91,714
2.	Assessed income u/s 143(3)	NIL
	Tax @30%	NIL

Income under section 115JB

Sr. No.	Particulars	Amount (Rs.)
1	Total income u/s 115JB as shown	(58,85,01,159)/-
Add:	Addition of disallowance made u/s 14A	168,23,98,967/-
2.	Total income u/s 115JB after assessment	109,38,97,808/-
	MAT @ 18.5%	20,23,71,094/-

5. Assuming powers conferred upon him by the provision of Section 263 of the Act, the PCIT issued a showcause notice u/s 263 of the Act which reads as under:-

“2. On verification of the records, it is seen from the P & L A/c, Computation of Income and Tax Audit Report, that while computing book profit you have made negative adjustment of Rs. 69,44,09,313/- on account of Transition Amount (1/5th of Rs.347.20 crores) u/s. 115JB (2C) of the Act. Further perusal revealed that the Total transitional amount of Rs.347.20 crores considered for adjustment included Fair Value of financial assets (expected credit losses associated with its assets carried at amortized cost) of Rs. 131, 35,08, 642/-. As this adjustment, i.e. expected credit

loss associated with financial asset is contingent in nature, the negative adjustment on this account to book profit is to be made only at the time of realization/disposal/retirement or otherwise. Thus, adjustment of Rs.26,27,01,728/- (1/5th of Rs. 131,35,08,642) included in total negative adjustment of Rs. 69,44,09,313/- (debited in MAT working) made u/s. 115JB (2C) is not in order and was required to be disallowed. Omission to adhere to provisions of the Act resulted in short computation of book profit by Rs.26,27,01,728/-.

3. *In view of the above, it is seen that the order passed u/s 143 r.w.s.144B dated 19.04.2021. is erroneous and prejudicial to the interests of revenue and is required to be set-aside on the above issue by invoking the provisions of section 263 of the Act. Hence, it is requested to show-cause as to why the same should not be quashed/set aside for fresh adjudication after considering the facts as discussed above."*

5.1. In response to the aforesaid notice, the assessee attended the proceedings and filed its reply. The reply of the assessee did not find any favour with the PCIT who concluded as under:-

"7.1.2 It is seen from the records that the assessee has claimed 1/5th of 131,35,08,642/- being Rs. 26,27,01,728/- towards the negative transition amount in computation of its book profit, which relates to preference shares investment of Rs. 131,35,08,652/- in its subsidiary RNRL - Singapore. However, this would fall under sub clause (E) of clause (iii) to o the Explanation of sec. 115JB(2C) of the Act and hence would not be included in the transition amount for the purpose of deduction from Book Profit. Since the AO has allowed this claim of the assessee without proper enquiry, the order passed u/s.143 r.w.s.144B dated 19.04.2021 is clearly erroneous and also prejudicial to the interests of revenue.

8. In view of the above, I am of the considered opinion that the assessment order passed by the Assessing Officer u/s.143(3) rws 144B dated 19.04.2021, is erroneous in so far as it is prejudicial to the interests of the revenue. Accordingly, the said order passed by the Assessing Officer is set-aside on the issue of "Allowance of Transition Amount u/s.115JB(2C) of Rs. 26,27,01,728/- and the AO is directed to make a thorough enquiry in this matter and re-assess the income after giving an opportunity of being heard to the assessee."

5.2. The undisputed fact is that while framing the assessment order dated 19/04/2021, the AO did not inquire the impugned issue raised by the PCIT.

6. The Id. Counsel before us, vehemently stated that the submissions of the assessee have not been considered by the PCIT. It is the say of the

ld. Counsel that this is not the first year of claim and, therefore, unless the initial year is disturbed, subsequent years cannot be disturbed.

7. In our considered opinion, once it has been accepted that the AO did not make any inquiry whatsoever, so far as the claim of the assessee was concerned and the AO did not question the computation of book profit *qua* the negative adjustment on account of transition amount, the assessment order becomes erroneous and prejudicial to the interest of the revenue *qua* Explanation (2) to Section 263 of the Act. However, at the same time we find that while setting aside the assessment order, the PCIT has issued certain directions which were not necessary. Therefore, confirming the set aside, we deem it fit to modify the directions.

8. The assessment order dated 19/04/2021 is set aside and the AO is directed to examine the claim of the assessee after making proper inquiries as per the relevant provisions of the law and after affording a reasonable and adequate opportunity of being heard to the assessee. With this modification, the order of the PCIT is upheld.

9. Before closing, the reliance on the decision of the Hon'ble High Court of Bombay in the case of *CIT vs. Paul Brothers [1995] 216 ITR 548 (Bombay)*, is not found to be relevant on facts of the case in hand.

10. In the result, appeal of the assessee is dismissed.

Order pronounced in the Court on 23rd August, 2024 at Mumbai.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 23/08/2024

SC S.P.

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai